# Fiduciary's Guide to ERISA
## Duties • Compliance • Accountability

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# Who is An ERISA Fiduciary?

## Named Fiduciaries under ERISA

- Individuals or entities explicitly designated in the Plan Documents:
  - Plan Sponsor
  - Retirement Committee
  - Benefits Committee.

They have primary responsibility for plan administration and oversight.

## Or Functional Fiduciaries

- Exercises **discretionary** authority or control with respect to **management** of the plan
  - Exercises any **authority or control** with respect to the **management or disposition of plan assets**
  - Renders "**investment advice for a fee**"
  - Has discretionary authority or responsibility in **plan administration**

# Service Providers

Services providers may or may not be fiduciaries. It depends on their contractual role and actual conduct.

Not fiduciaries if they perform ministerial functions or provide general education.

May be fiduciaries if they:

- Exercise discretion over plan assets
- Provide individualized investment advise for a fee
- *Discretion is key (ministerial tasks: e.g., processing payroll deductions, processing distributions) do not trigger fiduciary status. Actual behavior may override contract language.*

# Investment Advise Fiduciary Rule – *Where it Stands Today*

- The 1975 five-part test remains the default standard for “investment advise” fiduciary status.
- The 2024 “Retirement Security Rule” issued by the DOL in April 2024 faced litigation and remains stayed/not in effect.
- In September 2025 the DOL announced its intent to revisit the fiduciary definition and is currently targeting 2026 for a new rulemaking effort.
- Closely monitor DOL updates and rulings for new development to the Fiduciary Rule.

# Core Fiduciary Duties: *Prudence & Loyalty*

- ***Prudence:*** Procedural Rigor, Expert Input, Documentation

  - **Procedural Rigor:** Fiduciaries must follow a deliberate and well-structured process when making decisions about plan investments, administration and service provider selection.
  - **Expert Input:** When fiduciaries lack specialized knowledge (e.g., investment strategy, legal compliance,), they are expected to seek advise from qualified experts.
  - **Documentation:** A strong paper trail is essential.

# Core Fiduciary Duties: *Prudence & Loyalty*

**Loyalty** – To act solely in the interest of participants and beneficiaries.

- Also called the "**exclusive benefit rule**“ - For the exclusive purpose of providing plan benefits.
- Avoid **conflicts of interest**.
- Ensure **reasonable plan expenses**.

# Follow Plan Documents & Investment Policy Statement (IPS)

- Fiduciaries are required to **follow the terms of the Plan Document** provided they are consistent with ERISA.
- While not legally required, an **IPS is a best practice tool** that outlines the plan's investment strategy, criteria for fund selection and monitoring procedures.
- Keep **plan documents current**: outdated plan documents or IPS can expose fiduciaries to risk.
- Make **regular reviews** of the following documents:
  - Plan documents and summary plan descriptions
  - Trust Agreement
  - Plan forms, rules, and procedures
  - Service agreements
  - Investment contracts
  - Amendments to the above documents
  - Committee meeting minutes

# Diversification

- Investment must be diversified to allow participants to construct portfolios suited to their **risk tolerance**, **time horizon**, and **retirement goals**.
- Menu should include a **mix of assets**: equity, fixed income, stable value funds and target date funds. Menu should be **reviewed periodically**.
- **QDIA**: ensure regulatory requirements, monitor performance, fees and document rationale for selection and any changes.
- **Pecuniary factors** drive decisions: Investment decisions must be based on financial considerations (e.g., risk, return and fees)
- Non-financial factors (e.g., **EGS considerations**) may only be used as tie-breakers when two options are otherwise economically equivalent.

# Litigation Trends: Breach of Duty of Loyalty

## *Spence v. American Airlines*

- The *Spence v. American Airlines* decision (2025) ruled that American Airlines breached its fiduciary duty of loyalty by allowing ESG (environmental/social/governance) objectives to influence plan decisions, subordinating participants' financial interests.

- **Key takeaways**:

  - ❑ Removal of EGS-related influence from plan governance: fiduciaries may still breach loyalty if their decisions or oversight allow corporate interests, non-pecuniary goals or other external influences to affect plan investment decisions.
  - ❑ The court reaffirmed that the duty of prudence focuses on how fiduciaries act (e.g., selection, monitoring, review) rather than guaranteed results.
  - ❑ Even robust processes may not save fiduciaries from a loyalty breach if other loyalty issues exist (Fiduciaries should evaluate not only the funds they offer but also the underlying managers' policy agendas, voting guidelines, and alignment with plan participants).
  - ❑ Does the IPS (Investment Policy Statement) or proxy-voting policy explicitly state that decisions must be made *solely in the interest of participants* and that non-pecuniary goals may only be considered under specified conditions (tie-breaker approach)?

# Reasonable Plan Expenses

1

Fiduciaries must ensure **fees are reasonable** relative to the services provided

2

**Failure to monitor and document** fee reasonableness can expose fiduciaries to personal liability and class action lawsuits

3

Fee **benchmarking and market checks** are important/RFP every 3-5 years is typical

4

Keep a "**litigation ready file**": analyses, negotiations, decisions and participant communications

# Litigation Trends:
# Excessive Fee Cases Post- *Hughes v. Northwestern*

- The *Hughes v. Northwestern* decision (2022) emphasized that fiduciaries must evaluate each investment option individually and cannot rely solely on offering a broad menu.

- Since then:

  - ❑ Excessive fee lawsuits have surged, especially **targeting recordkeeping and retail share classes**.
  - ❑ In many cases courts **scrutinize fiduciary processes**.
  - ❑ **Documentation wins cases**: courts favor fiduciaries who can show a prudent, well-documented process.

# Cybersecurity: impact on prudence fiduciary duty

- The DOL has issued guidance outlining **best practices for cybersecurity** in retirement plans. (Compliance Assistance Release 2024-01)
- Fiduciaries are expected to implement **robust controls** to protect participant data and plan assets.
- **Program elements** to evidence prudence:

  - ✓ **Vendor Due Diligence**: SOC 1 and SOC 2 reports
  - ✓ **Contractual Control**: include cybersecurity provisions in vendor contracts
  - ✓ **Technical Safeguards**: MFA, encryption, regular patching
  - ✓ **Participant Education**: recognizing phishing attempts and reporting suspicious activity
  - ✓ **Fraud Detection Tools**: alerts, login protocols, monitoring
  - ✓ **Breach Notification Playbooks**: communication templates, legal and forensic support contacts

# Missing Participants: impact on prudence fiduciary duty

- The DOL emphasizes that **documentation is critical** to demonstrate procedural prudence. Fiduciaries should maintain a "**missing participant file**"
- Fiduciaries should implement **systematic** and **repeatable process** to locate missing participants:

  - ✓ **Standard Search Steps**: USPS address forwarding service/Social Security Administration (SSA) Death master file, email/phones, beneficiary/emergency contact outreach, payroll records
  - ✓ **Escalation Path When Searches Fail**: Online search engines, third party locators, uncashed check monitoring

❖ ***Keep a Missing Participant File: USPS confirmation documents, uncashed distribution checks, call logs, locator service results, email outreach, beneficiary contact and escalation steps. If you cannot find someone, prove you have tried.***

# Recommended Practices

## Governance Mechanics to Reduce Risk

- **Formal Governance Structure**:

✓**Committee Charter**: defines authority, composition, quorum, meeting frequency, and delegated powers.

✓**Committee Minutes**: document minutes that show deliberation.

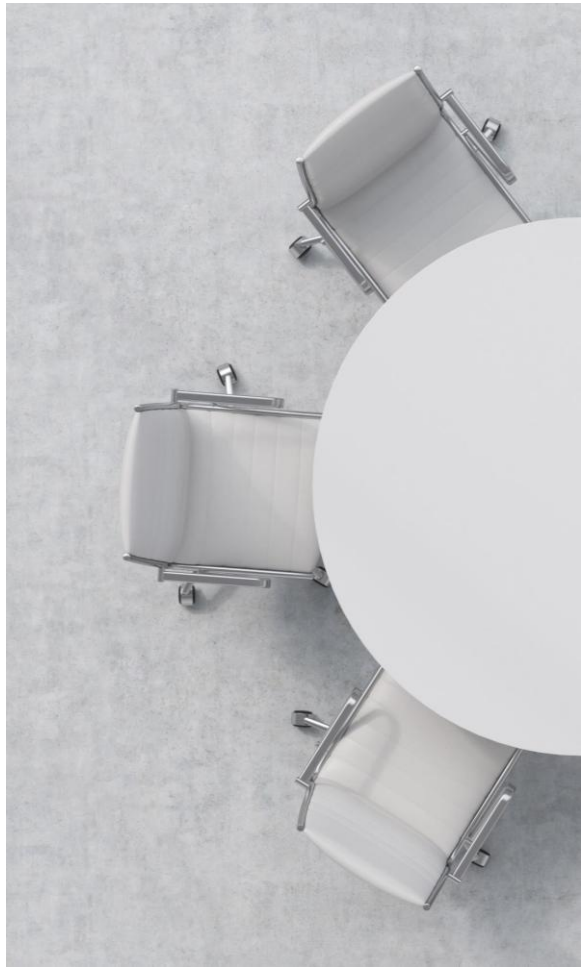
❖**Why it matters**: A clear governance structure demonstrates procedural prudence and protects individuals acting within delegated authority. Courts look for evidence that fiduciaries were properly appointed and acting under defined mandates.

# Recommended Practices

## Fiduciary Training & Continuing Education

- Initial training for all committee members upon appointment (ERISA basics, fiduciary duties, conflicts, prohibited transactions)
- Annual refreshers with updates on DOL guidance, litigation trends, and investment best practices
- Documentation: Keep training agendas, attendance records, and materials.

❖ **Why this matters**: Training establishes baseline of prudence and can mitigate personal liability demonstrating that the fiduciary acted “with the care of a prudent expert”.



# Recommended Practices

## Meeting Cadance, Agendas & Minutes/Document Management

- Meet quarterly at minimum (or more frequently when implementing changes)
- Circulate agendas and materials in advance (investment report, fee analyses, compliance updates)
- Minutes should capture deliberation, not transcripts: summarize what was revised, what questions were asked, and the rationale for the decisions.
- Maintain a fiduciary file: Committee Charter, IPS, RFPs, benchmarking reports, vendor evaluations, cybersecurity and missing participant procedures, annual training logs.

❖**Why this matters**: When DOL requests documents, organized and contemporaneous files reflect control, prudence and readiness. DOL and courts expect evidence of analysis and reasoning. “If it is not documented, it didn't happen”

# Plan Committee Charter

## Topics covered on  a Committee Charter

- What authority does the committee have?
- What is the committee's purpose?
- How is the committee structured?
- Who may serve on the committee?
- How are committee members replaced?
- How will the committee delegate authority?
- How will the committee assign responsibilities and duties?
- How frequently will the committee meet?
- What procedures will the committee follow?
- What is the process for selecting and managing plan service providers?
- What reporting will the committee do and to whom?

# Retirement Plan Committee

- Responsible for wide range of plan oversight functions
- Comprised of members familiar with HR functions, legal/compliance, data security (cross-functional team).
- Maintain current and historical plan documentation
- Handle participant claims and appeals
- Protect plan participants' data privacy and establish cyber security policies
- Actively manage plan service providers
- Monitor administration processes and procedures
- Ensure retirement plan operational failures are corrected timely and appropriately

# Investment Policy Statement

**Topics covered on  an Investment Policy Statement**

- Plan’s overall investment philosophy and investment objectives
- Who is responsible for choosing and monitoring the plan’s investments
- How the plan will construct its investment menu and how it determines what investment options to offer, including what asset classes are included and why
- Guidelines for evaluation of investments
- Responsibilities for all relevant parties

# Investment Plan Committee

- Comprised of members that have a financial background
- Focus on investment activities such as:
  - Funds offerings
  - Economic outlooks
  - Periodic review of plan fees and other financial benchmarking data
- Ensure investments are best in class
  - Qualitative issues: Management strategy/Management changes
  - Quantitative issues: Performance/Price
    - How funds benchmark relative to main peers
    - How funds perform net of fees
- Discuss funds that have been put on watch list
- Ensure compliance with Investment Policy Statements
- Ensure compliance with 404(c) safe harbor, if applicable

# 12 Month Compliance Calendar Example

## Q1

- Annual training, fee/expense review kickoff, cyber tabletop exercise

**Goal**: Reinforce fiduciary literacy, refresh governance documents and identify high risk areas early

## Q2

- RFP or market check planning; IPS policy refresh; QDIA performance and suitability review, audit prep meeting

**Goal:** Validate investment structure and fees through competitive review, ensure documentation aligns with current DOL scrutiny

## Q3

- Vendor scorecards (services quality error rates, participant satisfaction); PTE audit; missing participant audit, cybersecurity test follow-up (verify remediation)

**Goal**: Test operational integrity and confirm that fiduciary oversight of vendors and data protection is demonstrable.

## Q4

- Plan document updates; 404a-5 review (participant fee disclosure); Form 5500 coordination, year end committee meeting /minutes and certify completion of action log and action items.

**Goal**: Close compliance loop, finalize documentation, disclosures and strategic improvement.

# Fiduciaries Best Practices

- Formalize decision making process
- Meet regularly
- Seek expert advise
- Document everything
- Comply with 404(c) Safe Harbor

# THANK YOU

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